

As a preliminary matter, it is noted that the reply brief of 18 March 2008 was not available to the examiner in the USPTO's electronic file wrapper system until after the mailing of the advisory action mailed 29 January 2008. Therefore, the advisory action of 29 January 2008 was referring to the amendment filed after the appeal brief (received 15 October 2007) **only**. Specifically, item 3 of the advisory action indicates that the "reply is entered." The "reply" being referred to is the amendment of 15 October 2007, and **not** the reply brief of 18 March 2008.

The reply brief filed on 18 March 2008 has not been considered because it is not in compliance with 37 CFR 41.41(a). The reply brief is not entered because it included two new, non-admitted affidavits, namely, the 3rd supplemental declaration of Richard Heuser submitted in copending application 10/179,589 and the 2nd supplemental declaration of Andrew E. Lorincz submitted in copending 10/179,589. See especially 37 C.F.R. § 41.41(a) and (b) which states:

**37 CFR 41.41. Reply brief.*

(a)

(1) Appellant may file a reply brief to an examiner's answer within two months from the date of the examiner's answer.

(2) A reply brief shall not include any new or non-admitted amendment, or any new or non-admitted affidavit or other evidence. See § 1.116 of this title for amendments, affidavits or other evidence filed after final action but before or on the same date of filing an appeal and § 41.33 for amendments, affidavits or other evidence filed after the date of filing the appeal.

(b) A reply brief that is not in compliance with paragraph (a) of this section will not be considered. Appellant will be notified if a reply brief is not in compliance with paragraph (a) of this section.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth C. Kemmerer, Ph.D. whose telephone number is (571) 272-0874. The examiner can normally be reached on Monday through Friday, 9:00 a.m. to 5:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Nickol, Ph.D. can be reached on (571) 272-0835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ECK

/Elizabeth C. Kemmerer/
Primary Examiner, Art Unit 1646